

80081-2

No. 80081-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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THE OFFICE OF RON SIMS, KING COUNTY EXECUTIVE, a
subdivision of KING COUNTY, a municipal corporation; THE KING
COUNTY DEPARTMENT OF FINANCE, a subdivision of KING
COUNTY, a municipal corporation; and THE KING COUNTY
DEPARTMENT OF STADIUM ADMINISTRATION, a subdivision of
KING COUNTY, a municipal corporation,

Petitioner

v.

ARMEN YOUSOUFIAN,

Respondent.

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MAY 22 2007
CLERK OF SUPREME COURT
STATE OF WASHINGTON
[Signature]

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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2007 MAY 18 PM 4:32

RESPONSE TO PETITION FOR REVIEW

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ORIGINAL

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I. IDENTITY OF RESPONDENT

Respondent Armen Yousoufian is a private citizen who was improperly denied documents to which he was entitled under The Public Disclosure Act. Mr. Yousoufian respectfully requests this Court deny Petitioner/Defendant King County's Petition for Discretionary Review of the decision designated in Part II.

II. ADDITIONAL ISSUES FOR REVIEW

Respondent Armen Yousoufian opposes King County's Petition for Review by this Court of *Yousoufian v. The Office of Ron Sims, et al.*, 137 Wn.App. 69, 151 P.3d 243 (2007) (*Yousoufian II*), because this carefully reasoned decision is consistent with the decision of this Court in *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 98 P.3d 463 (2004). However, if the Petition for Review is granted, Yousoufian seeks review of the following issues as provided in RAP 13.4(d):

1. Should economic loss be eliminated or minimized as a factor in determining the per-day penalty for violation of the PDA since nothing in the language, legislative history or purpose of the Act supports consideration of economic loss as a relevant factor?
2. Given the trial court's Findings of Fact and Conclusions of Law, is the totality of King County's misconduct more accurately characterized as wanton? Yousoufian seeks review of this Issue only if

the Court grants review of King County's Issue for Review 6 regarding characterization of the County's conduct as gross negligence.

3. In addition to the degree of culpability, should deterrence of violations of the PDA and providing incentive to those enforcing the Act be the major considerations in setting the per-day penalty?

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

A King County Superior Court trial judge found egregious violations of the PDA, ruled that King County had not acted in good faith, and awarded penalties and attorneys' fees. (Attachment 1, Findings; CP 28-58). She grouped documents that were not timely produced into ten groups and subtracted 527 days from the total days each of six groups of documents that were late, for a total reduction of 3,162 penalty days. (Findings at 30-31; CP 57-58). Though the trial judge made extensive Findings of Fact and Conclusions of Law condemning King County's misconduct, she awarded a minimum \$5-a-day penalty on the per-day penalty scale.

The Court of Appeals, Division I, in *Yousoufian v. Office of Ron Sims*, 114 Wn.App. 836, 60 P.3d 667 (2003), ruled that because of King County's gross negligence, Yousoufian was entitled to more than the statutory \$5 a day minimum penalty awarded by the trial court. The

appellate court upheld the trial court's categorization of the documents withheld into ten groups, constituting ten violations, and upheld the trial court's computation of penalty days that included a reduction in days due to Yousoufian's delay in filing a lawsuit. The Court of Appeals also ruled that the size of an attorney fee award could not be used to justify a smaller penalty award, as the trial court had done.

This Court (1) affirmed the Court of Appeals ruling "that assessing the minimum penalty of \$5 a day was unreasonable considering that the County acted with gross negligence," *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 438, 98 P.3d 463 (2004); (2) reversed the Court of Appeals' decision reducing the number of penalty days and ruled that "the PDA does not allow a reduction of the penalty period." *Yousoufian*, 152 Wn.2d at 438; and (3) affirmed the Court of Appeals' decision that the documents produced by King County were properly placed in ten groups for purposes of the penalty calculation.

At this point, the appellate courts had determined two of the three factors in the penalty calculation – the number of days documents were not produced and the number of documents or groups of documents that were not produced, for a total of 8,252 penalty days. This left only the per-day penalty for decision.

On remand, the trial court awarded a penalty of \$15 per day on the \$5-\$100 penalty scale, for a total penalty of \$123,780. Total attorney fees awarded for the trial, appeal and remand of this case were \$299,246.26.

Yousoufian appealed this second trial court decision, claiming the single error that the trial court abused its discretion by awarding \$15 per day on the \$5-\$100 a day statutory penalty scale. Because of the egregious nature of King County's misconduct, the Court of Appeals ruled that the trial court had abused its discretion and remanded the case for a determination of an appropriate penalty. *Yousoufian II*, 137 Wn.App. at 71.

B. FACTUAL BACKGROUND

Armed with the Public Disclosure Act, Yousoufian requested documents from the King County Executive regarding the \$300,000,000 public financing of a new football stadium for the Seattle Seahawks. He made his request on May 30, 1997, 18 days before a referendum vote on the public financing proposal. Not until June 8, 2001, over four years after Yousoufian's initial request and after he had commenced this litigation, did Yousoufian receive the final documents that the trial court deemed responsive to his request. (Findings at 13; CP 40). Once Yousoufian filed a lawsuit, the County produced most of the requested documents within a few days. (Findings at 17; CP 44). The trial court characterized the

conduct of King County as demonstrating a lack of good faith. (Findings at 17; CP 44).

The court does not find that there was "bad faith" in the sense of intentional non-disclosure. However, the court finds that there was not a good faith effort by the involved County staff to read, understand and respond to Mr. Yousoufian's letter in a timely, accurate manner. There was a lack of coordination among the departments and staff assigned to the task, and absolutely no effective oversight of the PDA request. Certainly, King County did not render full assistance to Mr. Yousoufian as required under the statute. Nor was there any effective system for tracking PDA requests to ensure compliance with the law.

The County's lack of good faith was also apparent in misrepresentations made in correspondence to Mr. Yousoufian. Many of the letters contained incorrect statements, both factual and legal. No effort was made to verify the accuracy of those statements.

In summary, the County was negligent in the way it responded to Mr. Yousoufian's PDA request at every step of the way, and this negligence amount to a lack of good faith. There was a lack of coordination among the departments, and there was a lack of oversight by the Executive's office. The people given the responsibility for this PDA request had only a rudimentary understanding of the County's responsibilities under the PDA and apparently were not trained in how to locate and retrieve documentation, or didn't take the trouble to do so. No one ever took the time to carefully read Mr. Yousoufian's letter.

(Findings at 17-18; CP 44-45).

The Findings and Conclusions of the trial court demonstrate the unusually high degree of culpability in this case. King County made statements to Mr. Yousoufian that were deceptive and misleading.

(Findings at 5, 11 and 18; CP 32, 38 and 45). Several times it told him that all documents had been produced when they had not. (Findings at 5 and 11; CP 32 and 38). It told him that the archives were being searched when they were not. (Findings at 2 and 8; CP 29 and 35). It told him that documents were being compiled when they were not. (Findings at 4; CP 31). It told him that hundreds of hours had been spend trying to retrieve requested documents when they had not. (Findings at 11; CP 38). It told him that the Executive is only responsible for retrieving documents in its office, which is not the case. (Findings at 11; CP 38).

The same prosecuting attorney told Mr. Yousoufian to contact the Finance Office for the documents he sought and shortly thereafter wrote to him on behalf of the Finance Office that it did not have the documents. In fact, it did. (Findings at 11-12; CP 38-39).

On October 9th, an employee wrote to Mr. Yousoufian that an archival search was underway and that documents would be produced in two weeks. That same day a different staff person wrote informing Mr. Yousoufian “that there were no more responsive documents.” (Findings at 8; CP 35).

The Findings and Conclusions are riddled with phrases like “untimely and unreasonable” (Findings at 3; CP 30), “no evidence that Mr. Woo had the appropriate training or experience” (Findings at 5; CP

32), "negligently overlooked" (Findings at 5; CP 32), "negligence of county staff" (Findings at 6; CP 33), "no action to investigate the problem" (Findings at 6; CP 33), "not adequately trained or knowledgeable" (Findings at 7; CP 34), "did not carefully read nor reasonably understand" (Findings at 7; CP 34), "made no attempt to find ... continued to disregard" (Findings at 7; CP 34), "this explanation was not reasonable" (Findings at 7; CP 34), "not reasonable to ask Mr. Yousoufian where to search" (Findings at 8; CP 35), "lack of coordination" (Findings at 8; CP 35), "response was inadequate" (Findings at 11; CP 38), "factually and legally incorrect" (Findings at 11; CP 38), "statements were unsubstantiated.... Did have the documents" (Findings at 11-12; CP 38-39), "lack of communication and coordinated effort" (Findings at 12; CP 39), "lack of good faith" (Findings at 17; CP 44), "complete lack of coordination ... no effective oversight" (Findings at 18; CP 45), "misrepresentations made in correspondence" (Findings at 18; CP 45), "letters contained incorrect statements both factual and legal" (Findings at 18; CP 45), "negligent . . . at every step of the way and this negligence amounted to a lack of good faith" (Findings at 18; CP 45), "only a rudimentary understanding of the County's responsibilities . . . were not trained in how to locate and retrieve documentation, or didn't take the trouble to do so" (Findings at 18; CP 45).

The County failed to maintain an indexing and retrieval system and failed to conduct a thorough and careful search. (CP 10; Findings at 13, 15; CP 40-42). It turned compliance with the request over to the most untrained, inexperienced personnel. (Findings at 5, 7, 18; CP 32, 34, 45). It never claimed an exemption and never gave notice that additional time was needed. (Findings at 16). No third party enjoined access to the documents.

The violation involved a matter of significant public concern affecting substantial public resources. *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 447, 98 P.3d 463 (2004), Sanders, Dissenting in part.

IV. ARGUMENT

A. The Decision in *Yousoufian II* is Consistent With This Court's *Yousoufian* Decision.

The decision below does not create new law, does not conflict with existing law, does not raise issues of constitutional magnitude, and does not raise unresolved issues of public concern. RAP 13.4(b). The only argument King County makes relevant to RAP 13.4(b) criteria for granting review is that *Yousoufian, Ct. App. II* conflicts with this Court's *Yousoufian* decision. King County's law of the case argument collapses into its argument that *Yousoufian, Ct. App. II* conflicts with this Court's *Yousoufian* decision because both arguments depend on a conflict with

this Court's decision which is both controlling authority and the law of the case. "An appellate court's discretion to disregard the law of the case doctrine is at its apex when there has been a subsequent change in controlling precedent on appeal." *Roberson v. Perez*, 152 Wn.2d 33, 42-43, 123 P.2d 844 (2005).

King County cannot demonstrate a conflict because there is none. Contrary to King County's claim, the Court of Appeals did not "fashion its own rule which removes the presence or absence of an agency's bad faith from the analysis." (Petition at 12). Under both this Court's decision and *Yousoufian II*, an agency's bad faith continues to set penalties at the top of the statutory penalty scale. *Yousoufian II* merely builds on and spells out the implications of this Court's decision in order to help trial courts deal with degrees of culpability along the rest of the scale. The law of the case doctrine does not prevent a subsequent appellant opinion from clarifying and refining an earlier opinion in the same case. *Folsom v. County of Spokane*, 111 Wn.2d 256, 273, 759 P.2d 1196 (1998).

The Court of Appeals carefully adhered to this Court's *Yousoufian* decision in developing the implications of that decision. While acknowledging the importance of the presence or absence of bad faith, the Court of Appeals observed that this only identifies the extremes of culpability on the penalty scale and does not help a trial court in setting

penalties for conduct between the extremes. “As the law stands now, a simple emphasis on the presence or absence of an agency’s bad faith does little more than suggest what the two poles are on the penalty range and is inadequate to guide the trial court’s discretion in locating violations that call for a penalty somewhere in the middle of the expansive range the legislature has provided.” *Yousoufian II*, 137 Wn.App at 78-79. To fill in this gap, the Court of Appeals turned to this Court’s statement that the purpose of the PDA “is better served by increasing the penalty based on an agency’s culpability.” *Yousoufian II*, 137 Wn.App at 76, quoting *Yousoufian*, 152 Wn.2d at 435.¹ “Incorporating culpability into its analysis, the Court of Appeals observed that the purpose of the PDA would be better served by providing the trial courts with some guidance as to how to apply the Supreme Court’s emphasis on agency culpability to the PDA penalty range.” *Yousoufian II*, 137 Wn.App at 78.

Following this Court’s *Yousoufian* decision, the Court of Appeals rejected factors for applying the penalty scale proposed by *Yousoufian* to both courts and repeated by Justice Sanders in his concurrence/dissent. “Because it appears the Supreme Court majority implicitly declined to

¹In her concurring opinion, Justice Fairhurst also emphasized the central place of culpability in setting PDA penalties. “After determining the number of days that the agency has denied a request, the trial court should determine the proper amount of the penalty based on the agency’s culpability.” *Yousoufian*, 152 Wn.2d at 440, Fairhurst concurring.

adopt the factors enumerated by Justice Sanders in his dissent and offered to this Court at oral argument, we will not adopt these factors here.” *Yousoufian II*, 137 Wn.App at 77-78.

Instead, the Court of Appeals looked to the WPI which “defines several degrees of culpability in the civil context” to develop the implications of this Court’s emphasis on culpability. *Yousoufian II*, 137 Wn.App at 78-79. “These definitions would provide trial courts with the guidance they need to locate an agency’s conduct within the PDA penalty range.” *Id.* at 79-80.

The Court of Appeals lists five categories of culpability - four from the WPI and a fifth category at the low end of the scale that involves good faith but mistaken failure to comply with the PDA. *Id.* This fifth category is required by this Court’s ruling that a penalty award for a PDA violation is mandatory, even in the absence of negligence. *Yousoufian*, 152 Wn.2d at 343. These categories were not intended to squelch the trial court’s discretion, but were offered “instead [as] a guide for the trial court’s exercise of discretion.” *Yousoufian II*, 137 Wn.App at 80.

- B. King County’s Claim that Characterization of its Misconduct as Gross Negligence was a Mistake does not Meet the Criteria of RAP 13.4(b), is Incorrect and Cannot be Made at this Late Date.

On the basis of uncontested Findings of Fact and Conclusions of Law, the Court of Appeals in *Yousoufian I* characterized King County's repeated misconduct as gross negligence. *Yousoufian v. Office of Ron Sims*, 114 Wn.App. at 847, 853, and 854.

In its *Yousoufian I* cross appeal to this Court, King County did not assign error to this gross negligence characterization. In his oral argument before this Court, Senior Deputy Prosecuting Attorney Mark Stockdale conceded that King County's conduct amounted to gross negligence. "Stockdale: Lack of training, miscommunication, misunderstanding, lack of diligence -- no, for the trial court, it amounted to a finding of gross negligence." (Trial Brief on Remand at 11; CP 11). This Court likewise characterized King County's conduct as gross negligence. *Yousoufian*, 152 Wn.2d at 429 and 439.

In its *Yousoufian II* brief, King County made no objection or assignment of error to the gross negligence characterization. Now, in its Petition, King County for the first time in an appellate brief calls the gross negligence characterization "a mistake" and seeks to elevate the characterization to a basis for review by this Court. (Petition at 8, 17 and 20).

King County's egregious deceit, misrepresentation, and inaction has been fairly characterized as gross negligence. The characterization

meets none of the criteria for accepting review enumerated in RAP

13.4(b). By failing to assign error to the characterization before this Court and before the Court of Appeals in *Yousoufian II*, King County has forfeited its opportunity to challenge the characterization.

C. King County's Claim that *Yousoufian II* Did Not Use the Abuse of Discretion Standard in Reviewing Decision by Trial Court's Per-Day Penalty Decision is Groundless.

At the outset, *Yousoufian II* states that “We review the trial court’s determination of the daily penalties under the PDA for an abuse of discretion.” *Yousoufian II*, 137 Wn.App. at 76, citing *Yousoufian*, 152 Wn.2d at 438-39, 98 P.3d 463. *Yousoufian II*’s abuse of discretion ruling parallels that in *Yousoufian I* and in this Court regarding the original trial court’s per-day penalty decision. Because of the lack of good faith and inexcusable misconduct of King County, a penalty at the low end of the penalty scale cannot be justified given the \$5-\$100 penalty range. Misconduct of this degree must be penalized above the bottom of the scale. King County’s three sentence claim that the abuse of discretion standard was ignored is not supported by argument, analysis or citation. (Petition at 17-18). It is just another way of saying “our conduct wasn’t that bad and we don’t deserve a harsh penalty.” The claim meets none of the RAP 13.4(b) criteria for accepting review.

D. King County's Claim that the Correctness of a Penalty Should be Measured by the Total Penalty Rather Than By Adherence to the Three Statutory Formula is Contrary to this Court's Yousoufian Ruling, Lacks Statutory or Case Law Support and Does Not Meet Rap 13.4(b) Criteria.

King County faults *Yousoufian II* for only ruling on the adequacy of the per-day penalty, the only issue before the court, rather than using “the better tests [that] looks to whether the *total* penalty is sufficient under the circumstances of each case.” (Petition at 19). In its *Yousoufian* decision, this Court affirmed the number of violations at 10 based on document groupings by the trial court and established the total number of penalty days documents had been wrongfully withheld from Yousoufian. This left one question for remand: the appropriate per-day penalty. Thus, the amount of the per-day penalty was the only issue addressed by the trial court on remand and the only issue considered on appeal in *Yousoufian II*.

Each of the three appellate decisions in this case have adhered to the statutory formula with three discrete elements used in determining the total penalty.

In *Yousoufian I* the Court of Appeals (1) upheld the trial court's decision to sort documents into ten groups constituting ten violations, (2) upheld the trial court's reduced determination of penalty days, and (3) reversed the trial court's setting a \$5 a day penalty as an abuse of discretion given the nature and extent of King County's misconduct.

This Court (1) agreed that the number of documents/violations had been established, (2) reversed the decision reducing the number of days documents were withheld and establish the correct number of days, and (3) agreed “with the Court of Appeals that assessing the minimum penalty of \$5 a day was unreasonable considering that the County acted with gross negligence.” *Yousoufian*, 152 Wn.2d at 438.

Yousoufian II follows the exact same approach, treating the elements of the statutory formula separately. It addressed only the per-day penalty issue because that was the only issue left after this Court’s *Yousoufian* decision. “Here the only remaining issue is the amount of the daily penalty imposed on King County. The grouping of the documents and the number of penalty days has been resolved.” *Yousoufian II*, 137 Wn.App. at 76.

This Court described the formula for determining PDA penalties: “The process for determining the appropriate PDA award is best described as requiring two steps: (1) determine the amount of days the party was denied access [number of documents or groups of documents times number of days documents or groups of documents were withheld,] and (2) determine the appropriate per day penalty between \$5 and \$100 depending on the agency’s actions.” *Yousoufian*, 152 Wn.2d at 438.

Determination of the per-day penalty is an independent determination not affected by the amount of penalty days.

King County's "better test" for evaluating PDA penalties "looks to whether the *total* penalty is sufficient under the circumstances of each case. This requires a consideration of all relevant factors, including the per-day penalty and the number of penalty days." (Petition at 19). Under this "better test," the trial court would be free to adjust the three elements of the penalty formula however it wanted in order to reach a total penalty it thought appropriate. If King County withholds ten groups of documents for a period of years, the trial court could ignore the \$5-\$100 a day penalty scale and set a low per day penalty in order to keep the total penalty down.

King County cites no authority to support its "better test." Neither this Court in its *Yousoufian* decision nor any other reported case follows this approach. RCW 42.17.340(4), recodified as 42.56.550(4), establishes the three-part formula for computing penalties; nothing in the statute suggests that the parts can be manipulated or ignored to reach a total penalty acceptable to the trial judge. If the legislature had intended King County's "better test," it would have simply given trial courts the discretion to set the penalty for PDA violations without applying the three-factor penalty formula. This claim is unfounded and meets none of the criteria of RAP 13.4(b).

E. If Review is Granted by this Court, Respondent Seeks Review of the Following Additional Issues Pursuant to RAP 13.4(a) and (d):

1. Economic loss should be eliminated or minimized in determining the per-day penalty for violation of the PDA. Nothing in the language, legislative history or purpose of the Act supports consideration of economic loss as a relevant factor. The purpose of the PDA is to protect the citizens role in representative government. *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 250-51, 884 P.2d 592 (1994). "The PDA enables citizens to retain their sovereignty over their government and to demand full access to information relating to their government's activities. RCW 42.17.010, .251." *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 429, 98 P.3d 463 (2004). The harm to be prevented by the PDA is not economic harm, but harm to the effectiveness of democratic government.

A developer who wants to fill a wetland and who loses money because of documents denied under the PDA should not be awarded a higher penalty than an environmentalist who wants to protect the wetland and who, along with the community, loses the wetland because of documents denied under the PDA.

2. Under the WPI definition of culpability, much of King County's misconduct is more appropriately characterized as wanton than

as gross negligence. Wanton misconduct involves the intentional doing or failure to do an act with reckless disregard for the consequences when a person should know that such conduct is likely to cause harm. King County committed a number of such intentional acts and omissions in reckless disregard for the consequences and with at least imputed knowledge of likely harm to the purpose of the PDA.

For instance, King County told Yousoufian that the archives were being searched when they were not, that documents were being compiled when they were not, that hundreds of hours had been sent trying to retrieve documents when they had not, and that all documents had been produced when they had not. These were all intentional acts or omissions made with reckless disregard for the consequence that a citizen would likely be left without information to which he was entitled under the PDA.

3. In setting the per-day penalty, in addition to the degree of culpability, primary emphasis should be given to the size of the penalty required for deterrence and for those seeking records to have incentive to enforce the Act. These two considerations are squarely rooted in the language and purpose this statute.

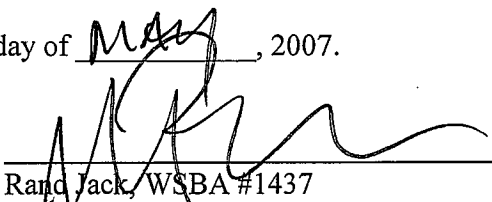
V. REQUEST FOR COSTS AND ATTORNEY FEES

RCW 42.17.340(4), now RCW 42.56.550(4), requires that “any person who prevails” in a PDA case “shall be awarded all costs, including reasonable attorney’s fees, incurred in connection with such legal action.” This provision is mandatory and it’s “strict enforcement . . . discourages improper denial of access to public records.” *Spokane Research and Defense Fund v. City of Spokane*, 155 Wn.2d 89, 101, 117 P.3d 1117(2005). Should Yousoufian prevail in this matter before this Court, he respectfully requests costs and reasonable attorney’s fees as provided by statute.

VI. CONCLUSION

Because *Yousoufian II* is consistent with this Court’s *Yousoufian* decision, King County’s Petition for Review should be denied. In the alternative, if this Court grants review, the Court should permit briefing and argument on the issues Yousoufian raises.

DATED this 18 day of May, 2007.



Rand Jack, WSBA #1437
Michael Brannan, WSBA #28838
Attorneys for Appellant

ATTACHMENT 1

1
2
3
4
5
6 SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

7 ARMEN YOUSOUFIAN,

8
9 Plaintiff,

10 vs.

11 THE OFFICE OF RON SIMS, KING
12 COUNTY EXECUTIVE; a subdivision of
13 KING COUNTY, a municipal corporation;
14 the KING COUNTY DEPARTMENT OF
15 FINANCE, a subdivision of KING
16 COUNTY, a municipal corporation; and the
17 KING COUNTY DEPARTMENT OF
18 STADIUM ADMINISTRATION, a
19 subdivision of KING COUNTY, a municipal
20 corporation,

21 Defendants.

No. 00-2-09581-3 SFA

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

22 This matter having come before the Court by trial by affidavit with oral argument,
23 on August 15th, 2001; and the plaintiff being represented by Michael G. Brannan and
24 David J. Balint, and the defendant being represented by Janine Joly; and the Court
25 having considered these arguments and all of the pleadings, declarations, depositions,
26 affidavits, and exhibits submitted by the parties in connection thereto, the Court FINDS
27 the following:

28
29 FINDINGS OF FACT AND
CONCLUSIONS OF LAW

1
Judge J. Kathleen Learned
King County Superior Court
516 Third Avenue
Seattle, WA 98104
206-296-9205

1 I. FINDINGS OF FACT

2
3 A. Reasonable Interpretation of Mr. Yousoufian's Public Disclosure Request to
4 the King County Executive.

5 On May 30th, 1997, Mr. Yousoufian faxed a letter to the King County Executive.
6 The letter was clearly marked as a Public Disclosure Request and contained a very
7 broad request for documents. PDA requests are to be read broadly to ensure that
8 sought-after documents are included rather than excluded. The letter plainly requested
9 the following:
10

- 11 1. Studies indicating that the "fast food" tax had not been passed on to
12 consumers (referred to by Ron Sims in an interview on KUOW).
13
14 2. Stadium studies:
15 a. The "Conway Study" and all related file materials. Because there were
16 two Conway studies, one in 1994 and one in 1996, the letter must be read
17 as incorporating both Conway studies.
18 b. All records related to the Conway studies; including how, why, and by
19 whom the studies were ordered and their costs.
20 c. Any other studies, previous or subsequent to the Conway studies,
21 regarding the economic impacts of sports stadiums.

22 King County claims that Mr. Yousoufian's request was vague. This claim is not
23 supported. Although Mr. Yousoufian's request was extremely broad, it was not vague
24 or ambiguous.
25

26 On December 8th, 1997, Mr. Fenton (Mr. Yousoufian's attorney at the time) sent
27 a letter to the King County Executive to emphasize his client's request. He reiterated
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29 FINDINGS OF FACT AND
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1 the initial request and added an additional request for documents related to "how, why
2 and by whom" the *various studies* (in addition to Conway) were ordered and the costs
3 of each study. Although Mr. Yousoufian contends that he requested this documentation
4 initially, a plain reading of his May 30th letter indicates otherwise.
5

6 **B. King County's Response to Mr. Yousoufian's Public Disclosure Request.**

7 King County was untimely and unreasonable in its interpretation of and response
8 to Mr. Yousoufian's PDA requests.
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10 Mr. Yousoufian's May 30, 1997 letter to the King County Executive was routed to
11 Pam Cole, Office Manager, for a response. Pam Cole responded by letter, dated June
12 4th, 1997 (signed by Desiree Leigh), and advised Mr. Yousoufian that the Conway study
13 was available for immediate viewing. In fact, the day before he sent his formal PDA
14 request, Mr. Yousoufian had received access to the 1994 Conway study (Conway #1),
15 absent relevant attachments. Ms. Cole advised that the other records would not be
16 available for three weeks because they had to be retrieved from Archives. It appears,
17 however, that she did not specifically inquire into the location of other studies before
18 responding. As discovered later, much of Mr. Yousoufian's PDA request involved
19 documentation not yet stored in Archives. Pam Cole's reference to other records dating
20 back to 1994 demonstrates that she knew that he was requesting documentation
21 related to studies in addition to the Conway study.
22

23 At the time of Mr. Yousoufian's initial request, Pam Cole was the person
24 responsible for handling public disclosure requests for the King County Executive's
25 Office. Sometime in June, this responsibility was transferred to Linda Meachum. Ms.
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1 Cole worked with Ms. Meachum for a short amount of time in order to train her in
2 responding to PDA requests. There is no evidence to support the adequacy of such
3 training.
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5 On June 10th, 1997, Mr. Yousoufian was given access to the Conway
6 attachments and to a study by Peat Marwick.

7 He sent a letter, dated June 18, 1997, objecting to the delayed response to his
8 PDA request and specifically complained that, due to the recent nature of the fast food
9 study, it would not be found in Archives. Pam Cole sent an E-mail to Ron Sims on June
10 20th to find out where she could locate the fast food study that he had referred to in his
11 interview with KUOW. Mr. Sims responded that Mr. Yousoufian should contact the
12 Restaurant Association for that study. A letter was then sent to Mr. Yousoufian to that
13 effect on June 20th, 1997. There is no evidence as to why this correspondence could
14 not have occurred within five days of May 30th, other than through negligence. The
15 June 20th letter also indicated that materials related to the Conway study were being
16 compiled and that he would be contacted about that in the following week. There is no
17 evidence that this contact was ever made.
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21 On June 12th, Linda Meachum forwarded Mr. Yousoufian's request to Susan
22 Clawson in Stadium Administration. Ms. Meachum relied on Susan Clawson to handle
23 the request thereafter, and made no further effort to respond or to verify that Stadium
24 Administration was properly responding to the request, or to retain overall responsibility
25 for the response.
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1 Susan Clawson then assigned the task to Steve Woo, her administrative
2 assistant, who had only been in his job a few days. Mr. Woo apparently did nothing
3 until July 15th. There was no evidence that Mr. Woo had the appropriate training or
4 experience to handle a PDA request, or that there was effective supervision of his work
5 on this request.
6

7 Susan Clawson claims that Mr. Yousoufian's PDA request was unclear but that
8 she thought the Stadium Administration was being responsive. However, she took no
9 independent action to clarify whatever ambiguities she believed to be in the request, nor
10 did she explain what in particular she found to be unclear or vague.
11

12 On July 15th, Mr. Woo talked with Mr. Yousoufian by telephone to inform him that
13 there was another Conway study (Conway #2) related to football, conducted in 1996.
14 On July 25th, Mr. Woo sent a letter to Mr. Yousoufian along with the Conway #2 study.
15 In response to Mr. Yousoufian's request for cost documentation, Mr. Woo provided cost
16 "information" for the Conway and the HOK studies, but no documents. He indicated
17 that the Kingdome had paid \$9,000 for the Conway study and \$150,000 toward the cost
18 of the HOK study. This latter figure was later determined to be incorrect. At this point,
19 Mr. Woo believed that he had completely satisfied Mr. Yousoufian's request for
20 documents. He ended the letter with, "I hope this answers the remaining questions you
21 had related to the Stadium's involvement with the above studies. If [you] need
22 additional information, please feel free to call me ..." Mr. Woo negligently overlooked
23 Mr. Yousoufian's request for cost documentation and for the other studies related to
24 sports stadiums.
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1 On August 21, 1997, Mr. Yousoufian wrote to the Executive to express his
2 frustration with the lack of an appropriate response to his PDA request. In his letter, he
3 expressly emphasized that he wanted more than just the Conway studies: "I asked for
4 any and all reports on economic impacts of sports stadiums." In response to this letter,
5 on August 21st, Mr. Woo allowed Mr. Yousoufian to view four more studies: the LMN
6 Architects Master Plan, the King County Task Force on Stadium Alternatives study, the
7 HOK #1 study, and the Seahawks/Kingdome Renovation Task Force study. Again,
8 there is no evidence as to why those studies were not made available sooner, except
9 through the negligence of county staff. These additional studies were still only a partial
10 response to Mr. Yousoufian's request. As discovered later, there were more studies
11 and "related file materials" responsive to Mr. Yousoufian's request. Additionally, no cost
12 documentation related to the Conway or other studies was provided.

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16 Mr. Woo was keenly aware of Mr. Yousoufian's anger and frustration. In an E-
17 mail to Linda Meachum, dated August 26th, Mr. Woo acknowledged this and explained
18 that the Conway studies had been provided to Mr. Yousoufian along with some cost
19 "information". He referred to the other four studies that Mr. Yousoufian had viewed on
20 August 21st and ended his E-mail, "I honesty don't know how to respond to Mr. Y..." In
21 response to this E-mail, Linda Meachum took no action to investigate the problem or to
22 evaluate Mr. Woo's ability to handle the request. Rather, she seems to have adopted
23 Mr. Woo's belief that Mr. Yousoufian, not the County's lack of responsiveness, was to
24 blame.
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1 Although Mr. Woo tried to be cooperative with Mr. Yousoufian, he was not
2 adequately trained or knowledgeable to handle this request, and his overall efforts to
3 fulfill Mr. Yousoufian's request were inadequate. It is apparent from the
4 correspondence that Mr. Woo did not carefully read nor reasonably understand Mr.
5 Yousoufian's PDA request. It is clear that Mr. Woo focused solely on the word
6 "Conway" in Mr. Yousoufian's initial letter, essentially ignoring all other aspects of the
7 request.
8

9
10 Even after Mr. Woo realized that more was wanted, he relinquished the studies
11 in increments, rather than all at once. He made no attempt to find an appropriate
12 source of information to help him track down all of the studies that had been completed
13 to date on the economic impacts of sports stadiums, and continued to disregard the
14 request for financial documentation. Mr. Woo had no formal training on how to respond
15 to PDA requests and had never read the statute or county ordinances.
16

17 On August 27th, 1997, a letter was mailed to Mr. Yousoufian. The letter appears
18 to be an attempt by the County to excuse its actions thus far. The letter stated that the
19 Executive had interpreted his letter as a request for information related to baseball,
20 thereby explaining why it had initially only provided Conway #1. This explanation was
21 not reasonable in light of the plain language of Mr. Yousoufian's May 30th request. The
22 letter stated that Linda Meachum was performing an Archive search for Executive
23 Office documents and would be in contact with him shortly. It further inquired into
24 whether Mr. Yousoufian would like an Archive search to be performed by the Stadium
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29 FINDINGS OF FACT AND
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1 Administration. It was not reasonable to ask Mr. Yousoufian where to search for the
2 documents responsive to his request.

3 On October 2nd, 1997, Mr. Yousoufian sent another very detailed letter
4 complaining that he had still not received what he was requesting. He reiterated his
5 request for cost documentation. On October 9th, Ms. Meachum responded only that her
6 office had already provided all of the documents in its possession pertaining to the May
7 30th request, demonstrating her overly narrow understanding of the County's
8 responsibility to locate responsive documents. Ms. Meachum then advised Mr.
9 Yousoufian to be very specific in future requests to the Executive's Office, a criticism
10 without a reasonable basis.

11 On October 9th, a letter signed by Desiree Leigh was sent to Mr. Yousoufian.
12 The letter notified him that an Executive Office archival search had been performed and
13 that documents responsive to his request were being forwarded to their attorneys for
14 review. The letter estimated that the documents would be available to view within two
15 weeks. There is no evidence whether such an archival search ever occurred, what was
16 found if anything, or why it took so long to conduct it. The fact that this letter was sent
17 on the same day as the one by Linda Meachum, stating that there were no more
18 responsive documents, clearly indicates a lack of coordination even among staff in the
19 Executive Office.

20 Mr. Woo then faxed a letter to Mr. Yousoufian on October 9th, explaining that two
21 more studies could be found on the King County's web site. On October 10th, Mr. Woo
22 sent these two items to Mr. Yousoufian (The "Kingdome's Future" report and a portion
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1 of the "CSL" study). He also provided information, but no documentation, as to how
2 much the consultant report cost.

3
4 On October 14th, Mr. Yousoufian again wrote to the Executive to express his
5 confusion about the apparent conflict between the Meachum and the Leigh letters. In
6 response, Oma LaMothe, King County Prosecuting Attorney, wrote to Mr. Yousoufian to
7 give her opinion that his initial PDA request had been fully answered. She also stated
8 that two boxes of materials, which she claimed were not relevant to his original request,
9 were nevertheless available for him to view. She identified the documents as relating
10 generally to the Kingdome. Ms. LaMothe ended the letter by commenting on the
11 alleged "difficulty" in specifically identifying the documents that Mr. Yousoufian had
12 requested.
13

14
15 On October 21st or 22nd, Mr. Yousoufian made several attempts to arrange for a
16 time with Ms. Meachum to view the documents. Mr. Yousoufian viewed the two boxes
17 on October 28th and again on February 6th with his attorney. It seems, at least initially,
18 that Mr. Yousoufian found these documents to be responsive to his request. He made
19 132 copies of documents on October 28th, and another 265 copies on February 6th. He
20 then sent a letter to Ms. Meachum thanking her for allowing him to inspect "at long last,
21 the documents I had originally requested in my May 30, 1997 Public Disclosure
22 Request." However, at trial he asserted that the material was "virtually all non-
23 responsive to my request (citizen letters, etc). No 'how, why, by whom' or cost
24 documents." The Court finds Mr. Yousoufian's initial reaction to the material to be more
25 credible than his post litigation statement, and finds that the boxes did contain
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29 FINDINGS OF FACT AND
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1 documents relating to the requested studies, exclusive of cost documentation.

2 However, the County failed to identify what documents were in the boxes and has
3 therefore not kept an appropriate record of materials produced.
4

5 After determining that he had still not received all the documents that he was
6 seeking, Mr. Yousoufian hired attorney Paul Fenton to assist in his efforts. Mr. Fenton
7 on December 8th to reiterate Mr. Yousoufian's request, and to request the cost
8 documentation associated with the other studies. On December 10th, Pam Cole sent
9 an E-mail to Steve Woo, and others, requesting the documentation. Mr. Woo
10 responded to Ms. Cole on December 12th, reiterating what he had already provided to
11 Mr. Yousoufian. He concluded that he believed that he had been completely
12 responsive to Mr. Yousoufian's request. He demonstrated his ignorance of the initial
13 request by stating that the initial request sought 2 distinct items, the survey and the
14 Conway study, along with associated material. He failed to make any mention of the
15 cost documentation that had been specifically requested. He seemed to have realized
16 at that point that Mr. Yousoufian's request was broader than he had originally thought,
17 because he stated that Mr. Yousoufian "now" wanted the unlimited universe of all
18 studies and information on sports stadiums previous and subsequent to his request,
19 along with all related information, even though the "previous and subsequent" language
20 came directly from the May 30th letter. Mr. Woo then indicated that he would generate
21 the other information on studies with regards to costs. However, there is no evidence
22 that Mr. Woo ever followed up on this. Instead, Mr. Wilson, Chief of Staff, wrote to Mr.
23 Fenton on December 15th, 1997, to state that the cost "information" provided by Mr.
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1 Woo satisfied Mr. Yousoufian's request and that future inquiries should be directed to
2 the Public Facility District. This response was inadequate.

3 Mr. Fenton sent another letter on December 31st to explain that Mr. Yousoufian's
4 request had not been adequately answered. Oma LaMothe responded on January
5 14th, 1998, that the Executive was only responsible for providing documents within its
6 office and that "hundreds of hours" had already been spent trying to retrieve responsive
7 documents. This statement was factually and legally incorrect. When the county did
8 make an informed effort to find the documents, they were located and produced within
9 a couple of days by Pat Steele. Ms. LaMothe either did not read the May 30, 1997
10 letter or incorrectly interpreted it. She apparently never checked with anyone with
11 appropriate knowledge to verify whether or not other responsive documents might exist,
12 and she never attempted to obtain the cost-related documentation responsive to Mr.
13 Yousoufian's initial request. She took a narrow view both of Mr. Yousoufian's request
14 and of the County's obligation to respond.

15 Mr. Fenton responded on March 6th, 1998 to inquire into any exemptions that the
16 County might be claiming and to determine whether any other agency might have the
17 documents that they were seeking. He reiterated the PDA request in substantial detail.
18 Ms. LaMothe responded on March 24th and advised Mr. Fenton to write to the Finance
19 Department, which he promptly did. The Finance Department claimed never to have
20 received this letter so Mr. Fenton re-sent the letter in June. Ms. LaMothe then
21 responded as representative of the Finance Department, on June 22nd, 1998, to notify
22 Mr. Fenton that it did not have the documents he requested. Her statements were
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1 unsubstantiated. In fact, the Department of Finance did have the documents, as was
2 discovered later.

3
4 The wording of many of Mr. Yousoufian's letters was, in many respects,
5 accusatory, offensive and abusive. Regardless of the excessiveness of the language,
6 however, his requests were clear and the County had an obligation to respond to them
7 in a prompt and accurate manner.

8
9 The present lawsuit was initiated on March 30th, 2000. In February of 2001, Pat
10 Steele was recruited to assist in efforts to locate documents responsive to Mr.
11 Yousoufian's request. She immediately began coordinating an effort to locate the
12 documents responsive to the request. Ms. Steele requested a list of archived records
13 from King County Archives, highlighted the records that she "believed might have *any*
14 *relation at all* to the subject of Armen Yousoufian's May 30, 1997, public disclosure
15 request," and contacted Susan Clawson in the Department of Finance for assistance in
16 locating the records. At her request, Pam Cole retrieved the appropriate documents
17 from Archives and sent them to Mr. Yousoufian's attorney. It was Ms. Steele's
18 understanding that all files appearing to contain any information possibly responsive to
19 Mr. Yousoufian's request should be provided. Ms. Cole then contacted the Department
20 of Finance to give it the information that it needed to retrieve the cost information that
21 Mr. Yousoufian was seeking. This was the appropriate way to handle a PDA request,
22 and the procedure that could and should have been employed in 1997.

23
24 It appears that there was a lack of communication and coordinated effort
25 between the Department of Finance and the Executive's Office in 1998. In February of
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29 FINDINGS OF FACT AND
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1 2001, Pam Cole discovered that the Department of Finance was unable to retrieve
2 records by subject (such as "sports stadiums"), and was only able to retrieve records by
3 contractor names and contract numbers. There is no evidence as to why this
4 "discovery" could not have been made in 1997 or 1998 with appropriate and diligent
5 inquiry.
6

7 Mr. Yousoufian received the bulk of the cost documentation on March 7th, 2001,
8 as well as the Mariners Baseball Club Economic Impact Study and the Economic
9 Impact of the Mariners on King County study. More cost information was provided on
10 March 19th, 2001. On April 20th, 2001, Mr. Yousoufian, and his attorney Mr. Brannan,
11 reviewed more boxes of previously undisclosed materials specifically containing one
12 additional study, the "CSL" study (dated 6/3/97). On June 8th, the HOK2 study (dated
13 12/96) was provided to Mr. Yousoufian. There is no evidence as to why these could not
14 have been provided in 1997.
15

16 The Court finds that as of trial, a reasonable disclosure of documents has now
17 been made. Any miscellaneous documents not yet produced are non-responsive not
18 warranting either findings or a fine.
19

20 In summary, King County failed to correctly interpret and respond to Mr.
21 Yousoufian's PDA request. With proper diligence, all of the material untimely provided
22 could and should have been provided in June or December of 1997.
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29 FINDINGS OF FACT AND
CONCLUSIONS OF LAW

1 II. CONCLUSIONS OF LAW

2
3 A. King County was the Agency Responsible for Responding to Mr. Yousoufian's
4 PDA request.

5 RCW 42.17.020 defines agency as all state and local agencies. Local agency
6 includes every county or department thereof. The Court finds that King County was the
7 agency responsible for ensuring that Mr. Yousoufian's PDA request was completely,
8 promptly, and accurately answered, regardless of which department maintained the
9 records. The request was sent to the King County Executive, directly in response to
10 comments made by Ron Sims. A PDA request sent to the chief executive officer of the
11 county must be broadly interpreted to cover all documents that are maintained by the
12 county executive agencies. The Department of Finance and the Stadium
13 Administration are both branches of the King County Executive, under its ultimate
14 direction.
15

16
17 The studies requested were also "used" by the County, as defined by the Act.
18 Documents that are reviewed, evaluated, or referred to, that have an impact on the
19 agency's decision-making process, fall within the parameters of the Act. Documents
20 need not be in the actual physical possession of the agency. It is sufficient that the
21 writing was prepared or used by the agency. Here, the studies were commissioned by
22 the Executive to answer questions related to the financing of sports teams and
23 stadiums in Washington. The fact that the documents were maintained by Stadium
24 Administration, or any other agency, is of no consequence. The Executive's Office had
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1 the obligation to coordinate and oversee all PDA requests for documents that it had
2 used.

3
4 Although delegation is reasonable, it was not proper for the Executive Office to
5 relinquish responsibility to another department without following through to ensure that
6 a complete response was rendered. It was clear from Mr. Yousoufian's October 2nd
7 letter that he had not received all of the documents that he had requested. Someone
8 should have had the responsibility for coordinating efforts between the Executive, the
9 Stadium Administration, and the Department of Finance to make sure that Mr.
10 Yousoufian received a full, complete, and accurate response to his request. No one did
11 this.
12

13 **B. The Documents Requested by Mr. Yousoufian were "Public Records" under**
14 **the PDA.**

15 "Public Record" is defined under the Act as "any writing containing information
16 relating to the conduct of government or the performance of any governmental or
17 propriety function prepared, owned, used, or retained by any state or local agency
18 regardless of physical form or characteristics." Evaluating, reviewing, and referring to a
19 document constitutes "use" under the Act.
20

21 The studies and associated file material that Mr. Yousoufian requested are
22 clearly public records under the statute. The studies were commissioned by the
23 County, and the studies and associated file materials were referred to and evaluated by
24 the County when it made decisions regarding the viability of sports teams and stadiums
25 in Seattle. These documents clearly fall under the PDA as public records.
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1 The financial documentation requested by Mr. Yousoufian are also public
2 records under the Act. The records of contract, invoices, payment warrants, and
3 bidding documentation, along with other such cost documentation, were prepared,
4 retained and used by King County. Furthermore, these documents directly relate to the
5 conduct and performance of King County in securing those contracts.
6

7 **C. King County's Responses were Untimely under the PDA.**

8 Washington's Public Disclosure Act (PDA) requires a five-day response to all
9 public disclosure requests. The Act allows additional time, as *necessary*, to clarify the
10 intent of the request, to locate and assemble the information, or to determine whether
11 or not any of the information is exempt from disclosure. It is the agency's burden to
12 prove the necessity of and to set forth the reasons for any delay in responding to a
13 specific PDA request. The Court finds that King County has not met this burden.
14
15

16 The King County Executive received Mr. Yousoufian's initial request on May 30th,
17 1997, and therefore had until June 6th to either fulfill the request or to set forth valid
18 reasons why the request could not be fulfilled by that date. In response to Mr.
19 Yousoufian's letter, the Executive's Office sent him notification that, because the
20 documents he requested were in Archives, three weeks were required to respond to his
21 request. However, the County failed to provide evidence that any of the documents
22 were in archives at that time. This notification suspiciously resembled a form letter,
23 prohibited under the Act unless it set forth reasons specific to the request in question.
24 King County failed to establish at trial that three weeks was necessary to respond to Mr.
25 Yousoufian's request, either in whole or in part. The specific evidence is to the
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1 contrary. When Pat Steele finally reviewed Mr. Yousoufian's May 30th request, in
2 February of 2001, she coordinated an effort and located the documents within a few
3 days. Because of the large volume of documents requested, perhaps the County could
4 have provided evidence that a diligent response would have taken more than five days.
5 However, the County did not sustain this burden. The Court would have to speculate to
6 come up with a reasonable time due to "necessity", and therefore the Court sets all due
7 dates at five business days following the initial request.
8

9
10 King County also responded in an untimely manner to the December, 1997
11 request by Mr. Fenton for cost documentation for studies in addition to Conway. It was
12 not reasonable to require him to re-direct his inquiry to the Department of Finance. It
13 was the Executive Office's obligation to find where the documents were. There is no
14 evidence as to why this could not have been done in December, 1997.
15

16 **D. King County Demonstrated a Lack of Good Faith in its Response to Mr.**
17 **Yousoufian's PDA request.**

18 Washington's Public Disclosure Act requires agencies to act with due diligence
19 and speed in responding to requests for public documents. The Act imposes on
20 agencies an obligation to devote their best efforts to providing the "fullest assistance
21 possible" to citizens making public disclosure requests. If a request is ambiguous or
22 broad, the statute mandates that the agency make an effort to clarify and narrow the
23 request. A failure to fulfill these obligations amounts to a lack of good faith under the
24 statute.
25

26
27 The Court does not find that there was "bad faith" in the sense of intentional
28 nondisclosure. However, the Court finds that there was not a good faith effort by the

1 involved county staff to read, understand, and respond to Mr. Yousoufian's letter in a
2 timely, accurate manner. There was a complete lack of coordination among the
3 departments and staff assigned to the task, and absolutely no effective oversight of this
4 PDA request. Certainly, King County did not render full assistance to Mr. Yousoufian
5 as required under the statute. Nor was there an effective system for tracking a PDA
6 request to ensure compliance with the law.
7

8 The County's lack of good faith was also apparent in misrepresentations made in
9 correspondence to Mr. Yousoufian. Many of the letters contained incorrect statements,
10 both factual and legal. No effort was made to verify the accuracy of those statements.
11

12 In summary, the County was negligent in the way it responded to Mr.
13 Yousoufian's PDA request at every step of the way, and this negligence amounted to a
14 lack of good faith. There was a lack of coordination among the departments and there
15 was a lack of oversight by the Executive's Office. The people given the responsibility
16 for this PDA request had only a rudimentary understanding of the County's
17 responsibilities under the PDA and apparently were not trained in how to locate and
18 retrieve documentation, or didn't take the trouble to do so. No one ever took the time to
19 carefully read Mr. Yousoufian's letter. If they claimed to be confused about the request,
20 there was inadequate communication with Mr. Yousoufian to clear up the confusion.
21 There were broad assumptions that Mr. Yousoufian was being difficult or unreasonable,
22 assumptions which may have affected how people responded to his requests.
23

24 According to Pat Steele's declaration, the county is now implementing strategies
25 to increase communication between the various departments, and is implementing
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29 FINDINGS OF FACT AND
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1 training programs to properly teach people of their obligations under the PDA.
2 Hopefully these measures will be successful in ensuring that a similar mishandling of a
3 PDA request does not occur in the future.
4

5 Although there was an clear mishandling of Mr. Yousoufian's request, the Court
6 finds no intentional nondisclosure or intent to conceal. Although not effective, it
7 appears that the county's intent was to be responsive to Mr. Yousoufian's request.
8

9 **E. Mr. Yousoufian is Entitled to all Reasonable Attorney Fees and Costs.**

10 Costs and attorney fees are mandatory under the Act to compensate any person
11 who prevails in a court action to recover documents. Because the County offers no
12 objection to the costs, all costs associated with the present suit are granted. Attorney
13 fees were assessed as those reasonably necessary to secure the release of the
14 relevant documents.
15

16 **1. Mr. Fenton**

17 Mr. Fenton has asked for attorney fees in the amount of \$16,095, for 87 hours of
18 work, at a rate of \$185.00 per hour. The Court finds portions of this amount to be
19 unreasonable.
20

21 **a. Estimated Telephone Calls**

22 There has been no showing that anything productive occurred between July,
23 1998 and July, 1999. Therefore, these hours will be reduced by one-half, to 13 hours
24 total, for the 1997-98 hours.
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1 **b. Meetings with Citizen Activists**

2 This time will be disallowed because there was no showing that it was
3 reasonably necessary to the litigation. All ten hours will be stricken.
4

5 **c. Locating Alternative Counsel**

6 The time spent locating alternative counsel appears excessive and not
7 reasonably related to the success of the case. This time will be reduced by five hours.
8

9 **d. Total Award for Mr. Fenton's Fees**

10 The total time allowable for Mr. Fenton is 59 hours, and the total award for Mr.
11 Fenton's attorney fees is \$10,915.00.
12

13 **2. Mr. Balint**

14 Mr. Balint worked together with Mr. Brannan to represent Mr. Yousoufian in the
15 present lawsuit. Mr. Balint bills at a rate of \$250 per hour and his paralegal bills at \$125
16 per hour. The County has raised several objections with regards to his fees. Listed
17 below are the objections and the Court's ruling.
18

19 **a. Response to Defendant's Successful Motion in Limine and Work on**
20 **Declarations that were Found to be Inadmissible**

21 With regards to the individual motions, attorney fees will only be awarded to the
22 prevailing party. The County prevailed on its Motion in Limine to exclude evidence of
23 Mr. Yousoufian's other PDA requests. Therefore, attorney fees associated with
24 responding to that motion will not be granted. The amount billed on August 5th, 2001
25 will be reduced by one-fourth (\$218.75) as suggested by defendant.
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1 The County was also successful in excluding the testimony of Mr. Derdowski.
2 The attorney fees associated with the preparation of his declaration will not be granted.
3 Therefore, the amount billed on July 20th, 2001 will be reduced by an amount of
4 \$104.20 (25 minutes, as per Declaration of David J. Balint in Response to Objections to
5 Attorney's Fees).
6

7 **b. Duplicative Attorney Fees**
8

9 The County objects to the double billing associated with Mr. Balint and Mr.
10 Brannan conversing with one another. There was no showing that these discussions
11 were other than duplicative, and they would have been unnecessary if only one lawyer
12 had handled the case. Mr. Balint argues that because Mr. Brannan has a lower hourly
13 rate, that total fees were less. However, differences in hourly rates are presumed to
14 reflect skill and efficiency.
15

16 The values given by Mr. Balint in his July 20th, 2001 declaration were used to
17 determine the total time spent conversing with co-counsel. Because the supplemental
18 declarations contained no breakdown for these calls, an average of 16 minutes per call
19 was used. This value was obtained by averaging the times for phone calls listed in the
20 July 20th declaration. The Court finds that \$6,917 was spent talking and corresponding
21 with co-counsel. This amount shall be deducted from the total request.
22

23 Double attorney fees were also generated for several of the depositions. Mr.
24 Brannan conducted the depositions while Mr. Balint observed. Mr. Balint is not entitled
25 to attorney fees for sitting in on the depositions. Therefore, the attorney fees will be
26 reduced by \$4,482.
27
28

1 **c. Research on Irrelevant Matters**

2 The Court does not agree that the research and briefing on contract law was
3 wholly irrelevant, but does agree that it was excessive. Therefore, these fees will be
4 reduced by one-half, or \$3,300.
5

6 **d. Total Award for Mr. Balint's Attorney Fees and Costs**

7 Mr. Balint is requesting a total of \$48,700 in attorney fees: \$31,937.50 for time
8 spent between October 6th, 2000 through July 19th, 2001; \$14,787.50 for time spent
9 from July 19th through August 14th; \$1000 for the August 15th trial; and \$975 for work he
10 did on August 23rd. This amount will be reduced by \$15,021.95 for the reasons
11 explained above. The total award for his attorney fees will be \$33,678.05.
12
13

14 Mr. Balint requests \$5,581.25 for total costs associated with the case. This
15 amount will be awarded. The total award for his fees and costs is \$39,259.30.
16

17 **3. Mr. Brannan**

18 Mr. Brannan participated in the representation of Mr. Yousoufian, and bills at a rate
19 of \$185 per hour. The County has raised several objections with regards to his fees.
20 Listed below are the objections and the Court's ruling.
21

22 **a. Administrative Tasks Billed at Attorney Rates**

23 The Court does not find that Mr. Brannan spent an excessive amount of time
24 organizing files. Additionally, this organizing was always associated with review of the
25 file and/or research of legal issues. The conclusion that this was merely an
26 administrative task that could have been delegated to a non-lawyer is not supported.
27 There will be no reduction in attorney fees based on this argument.
28

1 **b. Review of Documents with Client**

2 The Court finds that it was appropriate for Mr. Brannan to review the boxes of
3 documents with his client, as document disclosure was the very heart of the litigation.
4
5 There will therefore be no reduction in attorney's fees based on this argument.

6 **c. Unsuccessful Motions to Reconsider and Compel**

7 With regards to the individual motions, attorney fees will only be awarded to the
8 prevailing party. Mr. Yousoufian's Motion to Reconsider was denied. Therefore,
9 attorney fees associated with that motion will not be granted (June 25th, 2001). The
10 attorney fees will be reduced by \$277.50.
11

12 Plaintiff's Second Motion to Compel was denied because the parties had failed
13 to meet and confer. There will be no award of fees associated with this motion. In his
14 attorney fees table, Mr. Brannan fails to segregate how much time was devoted to each
15 task. It is impossible to determine exactly how much time was devoted to the motion.
16 However, a reasonable estimate can be made by dividing the total time by the number
17 of tasks performed, for an estimate of time spent working on the motion. The total fees
18 will be reduced by \$11,033.
19
20

21 **d. Response to Defendant's Motions in Limine and Work on Inadmissible**
22 **Declarations**

23 Most of the County's Motion in Limine was granted. The County suggests that
24 Mr. Brannan's fee for responding to this motion be reduced to one-fourth to reflect this.
25 Mr. Brannan offers no counter-argument for that proposition. Therefore, his fees will be
26 reduced by \$2,969.25.
27
28

Two declarations submitted by plaintiff were deemed inadmissible. The County objects to fees associated with these declarations. It appears that a total of 21.1 hours were spent preparing these declarations. Because Mr. Brannan does not dispute this number as incorrect, the Court accepts the County's recommendation to reduce these fees by one-half. The total fees will be reduced by \$1,951.75.

e. Duplicative Attorney Fees

Mr. Brannan's fees for conversations with co-counsel will be deducted. Where it was impossible to determine a specific time for these conversations, the 16-minute average was again used. The total fees for these conversations will be reduced by \$3,293.00. The fee will also be reduced for duplicative time for trial attendance (\$1,110.00) for a total reduction of \$4,403.00.

f. Discovery in an Attempt to Prove Bad Faith

The Court finds that this discovery was not frivolous and was helpful to the Court's lack of good faith determination. Nor has the County specifically shown that the discovery was excessive, duplicative, or inefficiently conducted. A citizen is not required to assume government incompetence in response to a PDA request, and is entitled to search for other explanations. However, it does appear that significant time and effort was spent searching for the elusive "smoking gun" long after it should have been apparent that lack of diligence, not evil intent, was the cause of the problems. There will be a 10% reduction in the final amount authorized.

1 **g. Total Award for Brannan's Attorney Fees and Costs**

2 Mr. Brannan requests total attorney fees of \$85,248.00: \$80,697 for work
3 performed between October 2nd, 2000 through August 14th, 2001; and \$4,551.00 for
4 work performed between August 15th and August 27th. This amount will be reduced by
5 \$20,634.50 for the reasons described above, and an additional 10% for the "smoking
6 gun" inquiry. The total award for Mr. Brannan's attorney fees is \$58,152.15.
7

8 Mr. Brannan requests reimbursement for costs associated with the suit, totaling
9 \$1,198.85. This amount will be awarded. The total award of his attorney fees and
10 costs is \$59,351.00.
11

12 **4. Other Considerations**

13 The total award of attorney fees, even after specific itemized deductions,
14 impresses the court as excessive in relation to the complexity of the issues and
15 presentation. The time sheets submitted by counsel do not allow for a detailed
16 evaluation of whether all time was reasonably necessary. For example, Brannan's 15.6
17 hour day on June 7th, 2001 (including Internet research) and 12 hours on June 8th,
18 2001, appear excessive. Certain claims were clearly unfounded, such as the ludicrous
19 request for fines in the range of \$1.5 to \$3.6 million. Further, plaintiff's presentation of
20 the case could have been clearer for the court. Counsel did not prepare a clear and
21 detailed itemization of which documents were produced, when, and did not specify
22 which documents were relevant to the initial request. The Court had to request at trial
23 supplemental material to get this information. The Court's deliberation on this case was
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1 more time consuming and difficult than it would have been had the case been better
2 organized and more clearly presented.

3 The majority of the attorney's fees were generated after March 2001, the date on
4 which the County produced most of the documents that it had not produced in 1997.
5 The County asserted, but could not prove, that it had produced the HOK2 study in
6 1997. Therefore, the Court deemed it produced in June of 2001. As such, it was the
7 only document of substance not produced by March/April, 2001. The amount of
8 attorney time expended is out of proportion to what additional success was achieved on
9 the merits. By this time, the County had become aware of its error and was doing its
10 best to produce the requested documents.

11 Overall, the Court will reduce the total amount of attorney fees (\$102,745.20) by
12 an additional 20%, for a total award for attorney fees of \$82,196.16.

13 **F. King County Shall be Fined at a Rate of \$5 per Day for Each Relevant Study**
14 **and for Each Set of Financial Documentation Provided.**

15 Washington's Public Disclosure Act mandates a penalty of between \$5 and \$100
16 per document per day for each day that documents were improperly withheld from
17 disclosure. The statutory award is a penalty designed to encourage broad disclosure
18 and to deter improper denial of access to public records.

19 The Court has broad discretion in determining how and at what rate the penalties
20 will be assessed. A person who prevails at trial is entitled to at least the minimum
21 penalty award. In determining whether to award a penalty in excess of the minimum,
22 the court will take into account an amount necessary to effectuate the purpose behind
23 the statute of encouraging broad disclosure. The court will look to the good faith efforts

1 made by the agency in responding to the particular request. If there was little or no
2 good faith effort to provide the fullest assistance possible, the court will set the penalty
3 at an amount deemed necessary to deter future inappropriate conduct.
4

5 In deciding whether to award penalties over the minimum allowable amount, the
6 Court looked at the reasons for King County's failure to timely respond to Mr.
7 Yousoufian's request. The Court also considered whether the amount would
8 encourage King County to respond in a diligent manner to future PDA requests.
9

10 A rate of \$5 a day is selected because the Court finds that the combined total of
11 penalty and attorney fees is sufficient to deter future similar inappropriate conduct. The
12 penalties are not assessed on a per document basis, as requested by plaintiff, as this
13 results in a penalty totally out of proportion to the County's negligence, the harm done
14 thereby, and any amount needed for deterrence.
15

16 The County requests only a minimum fine of a few thousand dollars because it
17 tried to act in good faith, had good intentions, believed it was responding appropriately,
18 and because no evidence was shown that early disclosure would have had any material
19 impact on issues of public concern. The Court concludes these are definitely reasons
20 for not imposing a higher fine. However, government incompetence displayed in this
21 case is not justifiable and can be as detrimental to public confidence as actual
22 malfeasance. An insignificant penalty is simply inappropriate.
23

24 The plaintiff set forth 15 studies that he believed were responsive to his PDA
25 request: Conway #1, Pete Marwick Study, Conway #2, LMN Kingdome Master Plan,
26 King County Executive's Task Force on Stadium Alternatives dealing with Major League
27
28

1 Baseball, HOK #1, Seahawks/Kingdome Renovation Task Force Study, The
2 "Kingdome's Future" report, Seattle Mariners Baseball Club Economic Impact,
3 Economic Impact of Mariners on King County, Work Plan New Baseball Stadium
4 Proposal, CSL study, Football Stadium and Exhibition Center Neighborhood Impact
5 Analysis, New Football/Soccer Stadium and Exhibition Center Scoping Summary
6 report, HOK #2. Four of these studies were found by the Court to be non-responsive
7 and are therefore not included: LMN Architects Kingdome Master Plan (from the
8 evidence provided, it is impossible to determine the scope of this report or to determine
9 whether it has anything to do with the economic impacts of sports stadiums), Work Plan
10 New Baseball Stadium Proposal (this appears to be a funding proposal for the new
11 stadium and for maintenance of the Kingdome. There is no indication that it is a study
12 related to the economic impacts of sports stadiums), Football Stadium and Exhibition
13 Center Neighborhood Impact Analysis (this study was concluded on 7/23/97,
14 significantly past Mr. Yousoufian's PDA request for studies. Although Mr. Yousoufian
15 does request all subsequent studies in his initial letter, that means subsequent to the
16 Conway study, not "future" studies), New Football/Soccer Stadium and Exhibition
17 Center Scoping Summary report (this study was concluded on 11/12/97 and will not be
18 included for the same reasons as for the Neighborhood Impact Analysis).

19 Mr. Yousoufian also requested all cost documentation related to the above
20 studies. He claims that this documentation was requested in the initial May 30th, 1997
21 letter. However, as discussed above, the Court finds that only those cost documents
22 related to the Conway studies were requested at that time. All other cost
23

1 documentation was requested in Mr. Fenton's December 8th, 1997 letter. See Table,
2 page 32. The cost documentation for the following four studies were not included in the
3 determination of penalties because they were never received by Mr. Yousoufian and
4 were not included in the list of "Documents Not Yet Received" provided by plaintiff on
5 July 20th, 2001: King County Executive's Task Force on Stadium Alternatives, The
6 "Kingdome's Future" report, Seattle Mariners Baseball Club Economic Impact report,
7 and the Economic Impact of the Mariners on King County report. The Court finds that
8 Mr. Yousoufian has waived any request for that documentation. Below is a table listing
9 the documentation that the Court considered to be responsive to Mr. Yousoufian's
10 request, when received and the days late in production. All requests were due five
11 business days after the County received the request. There were 647 days between
12 the last letter to Mr. Yousoufian and the filing of suit. Because inclusion of this time
13 would encourage future plaintiffs to delay in filing suit in order to incur additional
14 penalties, this time was not included in the calculation of days late. However, 120 days
15 were subtracted from the 647 days as a reasonable amount of time for Mr. Yousoufian
16 to find an attorney to represent him in the above suit. The total days subtracted from
17 the total days late is 527 days.
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29 FINDINGS OF FACT AND
CONCLUSIONS OF LAW

TABLE OF DOCUMENTS RECEIVED

Name	Exhibit #	Requested	Due*	Received	Days Late**
1. Conway #1 Study (8/94)	N/A	5/30/97	6/6/97	6/10/97	4
2. Peat Marwick Study (5/94)	N/A	5/30/97	6/6/97	6/10/97	4
3. Conway #2 Study (3/96)	1	5/30/97	6/6/97	7/25/97	49
4. HOK1 Study (3/96)	4	5/30/97	6/6/97	8/21/97	76
5. King County Task Force on Stadium Alternatives Study (1/95)	3	5/30/97	6/6/97	8/21/97	76
6. Seahawks/Kingdome Renovation Task Force Study (1/97)	5	5/30/97	6/6/97	8/21/97	76
7. The "Kingdome's Future" Report (5/97)	7	5/30/97	6/6/97	10/10/97	126
8. Conway #2 Cost Documentation	N/A	5/30/97	6/6/97	3/7/01	843
9. HOK1 Cost Documentation	N/A	12/8/97	12/15/97	3/7/01	661
10. CSL Cost Documentation	N/A	12/8/97	12/15/97	3/7/01	651
11. Peat Marwick Cost Documentation	N/A	12/8/97	12/15/97	3/7/01	651
12. Mariners Baseball Club Economic Impact Study (10/19/91)	5	5/30/97	6/6/97	3/7/01	843
13. Economic Impact of Mariners on King County (10/28/91)	163	5/30/97	6/6/97	3/7/01	843
14. Conway #1 Cost Documentation	N/A	5/30/97	6/6/97	3/19/01	855
15. HOK2 Cost Documentation	N/A	12/8/97	12/15/97	3/19/01	663
16. Seahawks/Kingdome Renovation Task Force Cost Documentation	N/A	12/8/97	12/15/97	3/19/01	663
17. CSL Study (6/3/97)	165	5/30/97	6/6/97	4/20/01	887
18. HOK2 Study (12/96)	169	5/30/97	6/6/97	6/8/01	936

TOTAL: 8897

*5 day deadline is five business days.

**527 days were subtracted from total days late (647 days delay in filing suit minus

120 days as a reasonable amount of time for Mr. Yousoufian to find an attorney).

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Judge J. Kathleen Learned
King County Superior Court
516 Third Avenue
Seattle, WA 98104
206-296-9205

1 Penalties will be based on the dates that production was made and the days late
2 of each such production as follows:

	Documents	Produced On	Days Late	\$5.00 a day
3				
4				
5	A All Documents	6/10/97	4	\$ 20.00
6	B All Documents	7/25/97	49	\$ 245.00
7	C All Documents	8/21/97	76	\$ 380.00
8	D All Documents	10/10/97	126	\$ 630.00
9	E Some Documents	3/7/01	843	\$ 4,215.00
10	F Some Documents	3/7/01	651	\$ 3,255.00
11	G Some Documents	3/19/01	855	\$ 4,275.00
12	H Some Documents	3/18/01	663	\$ 3,315.00
13	I All Documents	4/20/01	887	\$ 4,435.00
14	J All Documents	6/8/01	936	\$ 4,680.00
15	TOTAL			\$25,440.00

16
17 DATED this 21st day of September, 2001.

18
19
20 
21 J. Kathleen Learned, Judge

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29 FINDINGS OF FACT AND
CONCLUSIONS OF LAW

SUPREME COURT OF THE STATE OF WASHINGTON

ARMEN YOUSOUFIAN,

Petitioner

v.

THE OFFICE OF RON SIMS, KING
COUNTY EXECUTIVE, a subdivision of
KING COUNTY, a municipal corporation;
THE KING COUNTY DEPARTMENT
OF FINANCE, a subdivision of KING
COUNTY, a municipal corporation; and
THE KING COUNTY DEPARTMENT
OF STADIUM ADMINISTRATION, a
subdivision of KING COUNTY, a
municipal corporation,

Respondents.

No. 80081-2

DECLARATION OF SERVICE

FILED
COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
2007 MAY 18 PM 4:32

I, DAVID MEIDE, declare as follows:

- 1) I am over 18 years of age and a U.S. citizen.
- 2) On May 18, 2007, I caused to be delivered true and accurate copies of the following documents:
 - a. Response to Petition for Review
 - b. this Declaration of Service as indicated below:

Service List

John Zeldenrust King County Prosecutor's Office 500 4 th Avenue, 9 th Floor Seattle, WA 98104 (Counsel for Petitioner)	<input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Mailed <input type="checkbox"/> Faxed <input type="checkbox"/> EMAIL
Michele Earl-Hubbard 1501 4th Ave Suite 2600 Seattle, WA 98101 (Counsel for Amicus Allied Daily Newspapers of Washington; Washington Newspaper Publisher's Association; & Washington Coalition for Open Government)	<input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Mailed <input type="checkbox"/> Faxed <input checked="" type="checkbox"/> EMAIL

I HEREBY DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE
BEST OF MY KNOWLEDGE.

DATED this 18th day of May, 2007, at Seattle Washington.



DAVID MEIDE